IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.456 OF 2005

Datta Maruti Salgar ...Petitioner
vs.
State of Maharashtra ...Respondent

Mr.R.C.Makhija (Advocate appointed)
Ms Rajeshree Gadhvi,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 8,2005

P.C.:

1. Heard Advocate for the Petitioner and the learned A.P.P. for State. The order under challenge in this Petition filed through jail is dated 6th December 2004 by which the application for furlough leave made by the Petitioner has been rejected. Rejection is on the ground that there is adverse police report making out the ground under Rule 4(4) of the Prisons (Bombay Furlough and Parole), Rules 1959.

2. Perusal of the report dated 9th September 2004 shows that the surety offered by the Petitioner of his wife is not accepted on the ground that the surety is old, her financial condition is not sound and her husband and son are undergoing life sentence. The second ground in the police report is that there is a danger to the relatives of the victim of the offence committed by the Petitioner if the Petitioner is enlarged on furlough leave. It is stated that the law and order situation is likely to be affected if the Petitioner is enlarged on furlough leave.

3. The old age of the surety by itself is no ground to reject the prayer of the Petitioner for furlough leave. It is not stated in the report that the surety has become dis-abled or infirm or weak on account of alleged old age. In fact the age of the surety is 55 years which cannot be termed as old age. The fact that her husband is undergoing life sentence is no ground to discard her surety. As regards eligibility of surety on other aspects is concerned, time deserves to be granted to the said surety to furnish relevant documents. The second part of the adverse police report is based on mere apprehension. By no stretch of imagination, on the basis of such mere apprehension, the ground of rejection incorporated in Sub Rule 4 of Rule 4 of the said Rules of 1959 can be invoked.

4. The application for furlough leave was made by the Petitioner in June 2004. A period of more than a year has been lapsed. Therefore, final order cannot be passed on the application made by the Petitioner and the prayer for furlough leave will have to be reconsidered by the concerned Authority.

5. Hence, I pass the following order :

i) Impugned order dated 6th December 2004 is quashed and set aside.

ii) The Competent Authority will reconsider the application dated 26th June 2004 made by the Petitioner in the light of Bthe observations made in the Judgment. The application shall be reconsiderd as expeditiously as possible.

. It will be open for the Petitioner to furnish surety of some other person.

. A copy of this order be forwarded to the Petitioner in the concerned prison.

JUDGE